

**SINKING FUND  
AGREEMENT**  
(For Use in the Section  
232 Program)

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 0000-0000  
(exp. 00/00/00)

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**THIS AGREEMENT** is effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
and between \_\_\_\_\_, Lender, and  
\_\_\_\_\_, Borrower, and  
\_\_\_\_\_ the Lessee/Operator, if any.

The terms Lender and Borrower shall be deemed to have the meanings set forth set forth in the HUD regulatory agreement applicable to this transaction.

The Borrower is the owner of a project known as \_\_\_\_\_ and further identified as Project No. \_\_\_\_\_, which project is financed by a Mortgage (or Deed of Trust) from the Lender with respect to which Mortgage the Secretary of the United States Department of Housing and Urban Development (HUD) has issued a commitment to insure.

The commitment to insure is conditioned upon a Sinking Fund account being established and funded in accordance with the Regulatory Agreement to assure that there are sufficient funds to amortize the principal of the loan. This Sinking Fund is required in addition to the Reserve for Replacement Fund, where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass through of principal and interest on the mortgage. This fund is held by the Lender under the Contract of Mortgage Insurance.

In consideration of the premises, the parties acknowledge and agree as follows:

1. The Borrower agrees to direct and empower the payor of the capital reimbursement funds to deposit such funds into a trust account with the Lender. It is understood that the that the trust instrument shall be irrevocable unless approved by the Lender and shall provide that the trustee shall immediately segregate from each provider payment an amount representing the excess depreciation component of the capital reimbursement per a schedule prepared by the Lender and pay it into the Sinking Fund held by the Lender. In jurisdictions which do not allow the Borrower to direct and empower the payor of the capital reimbursement fund to deposit funds into a trust account, the Borrower and the Lender enter into this agreement by which the parties are obliged to establish, make payments to and maintain a separate account for the Sinking Fund.
  - a. By October 1 of each year, Borrower shall prepare and file with the Lender a depreciation schedule reviewed by the Borrower's independent public account showing the total projected reimbursement for depreciation and

amount payable for principal payments coming due in each of Borrower's fiscal years, including the fiscal year during which the Mortgage Loan is paid.

- b. By January 1 of each year, the Lender shall prepare and file with the Borrower a funding schedule reflecting the amount required to be deposited in the Sinking Fund in each such project fiscal year and the cumulative balance in the Sinking Fund at the end of each project fiscal year.
  - c. The amount specified in the sinking fund schedule is to be deposited into the account to pay future principle payments of the Mortgage (Deed of Trust). Sums are deposited monthly into the Sinking Fund within 15 days of the close of each month, and shall commence upon the earlier of: (i) a scheduled commencement of principal amortization of the Loan, or (ii) the receipt by the project of depreciation reimbursement by any third party payor. Such fund shall at all times be under control of the Lender.
2. The Lender agrees:
  - a. to establish and maintain the Sinking Fund in an interest bearing account in a bank whose capital and surplus are at least \$50,000,000 and which is federally insured.
  - b. to furnish HUD quarterly financial reports on the investments, accounting on balances, deposits and withdrawals to the local field office having jurisdiction unless otherwise directed by HUD.
  - c. to monitor the Sinking Fund and examine the external auditor's fund balance report and notify HUD whether it complies with the Sinking Fund Agreement between the Borrower and the Lender, and
  - d. to promptly notify the Borrower and HUD of any irregularities in connection with the Sinking Fund and to take such corrective action as the Lender and HUD deem appropriate.
3. Nothing in this Agreement shall impair or prejudice any right that HUD may have with respect to such funds, particularly relating to the duty of the Lender of record to hold funds for and on behalf of the Borrower under the contract of mortgage insurance.
4. The Sinking Fund constitutes funds held by the Lender for and on behalf of the Borrower, and as such, is unrelated to the bond transaction or any other source of funds for the mortgage loan.
5. The Sinking Fund will be used to make principal payments in the later years of the Mortgage. In the event of default, the Lender shall have the power, only with the prior written approval of HUD or at the express direction of HUD, to apply the Sinking Fund to the payment of amounts due under the Note and related Loan Documents. Withdrawals from the Sinking Fund will be permitted by the Lender to be applied to principle payments due under the Note to the extent allowed by the Regulatory Agreement.

6. In the event of a claim for insurance benefits, the amount of benefits is subject to surcharge if funds have been disbursed from the Sinking Fund in a manner or for purposes not in compliance with the Regulatory Agreement between HUD and the Borrower. No such surcharge shall be made on the basis of the Borrower's failure to make required deposits into the Sinking Fund.
7. In the event the Borrower leases the Health Care Facility to an operator who is responsible for establishing and maintaining the Sinking Fund with the Lender, the aforesaid Sinking Fund provisions shall be fully applicable to the Lessee/Operator.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER

LENDER

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name

Print Name

LESSEE / OPERATOR, if applicable

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Print Name and Title

### **Warning**

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims and penalties under 24 C.F.R. Parts 24 and 28.